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CONCORD, N.H.

Honorable Herbert W. Rainie
Chairman, Executive Departments
and Administration Committee
House of Representatives
State House
Concord, N. H.

Dear Representative Rainie:

You have requested the opinion of this office as to whether or not the provisions of House Bill No. 473 are "constitutional."

Section 34 of the same part 19 of chapter 80, Revised Laws, as inserted by chapter 188, Laws of 1945 (chapter 234, RSA) which the bill seeks to amend authorizes selectmen of towns to permit the erection of monuments, tablets and markers by individuals or societies in public highways or other public grounds, in such places and of such character as may be approved by the selectmen, for the purpose of indicating the occurrence of historic events and matters of public interest; provided, that the reasonable use of such highway or other public place shall not be interfered with thereby.

If an owner of an historic site abutting a highway to which the state has only the easement of passage desires to erect or permit the erection of a sign which will not unreasonably interfere with the safety of the travelling public may be within his right to do so. State v. Cox, 91 N.H. 137; Winchester v. Capron, 63 N.H. 605; State v. Scott, 82 N.H. 278; Town of Exeter v. Moran, 80 N.H. 132. On the other hand if a state presumes to erect a sign under such circumstances within highway limits at premises of a landowner such erection of a sign may be an invasion of the owner's private rights. Each case stands on its own set of facts as to the relative rights and requirements of the owner and the travelling public. Harri-
son v. Moore, 74 N.H. 277; Leary v. Manchester, 91 N.H. 442; Opinion of the Justices, 94 N.H. 501.

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As to highways acquired and built under the Federal Road Aid Act, s. 1.18 (b) of the federal regulations provides:

"The rights of way provided for federal aid highway projects shall be held inviolate for public highway purposes and no signs, posters, billboards, roadside stands, or other private installations shall be permitted within the right of way limits."

Accordingly, it appears to be entirely within the scope of highway purposes to erect a sign which says "One mile to Daniel Webster's birthplace." Whether a sign may be erected in front of the building saying "This is Daniel Webster's birthplace" over the objections of the private owners or proprietors of Daniel Webster's birthplace is questionable. It will be noted that section 35 of part 12 in the case of erection of such signs and monuments by towns makes provision for just compensation by due process of law to the owner of property affected. In order to meet constitutional requirements it is suggested that a similar provision applicable to highways in which the state has an easement only as distinguished from premises in which the state owns the fee of the road is needed if this act is to become law.

Erection of a sign immediately at an historic site may well be within the category of signs aiding public travel and justifying the use of highway funds. Certainly a motorist who has journeyed to view an historic location and has had the benefit from time to time of signs legally erected which indicate that he is within some miles of his objective is aided by a sign which tells him when he has reached there so that he may not drive by his objective and get involved in turning around on the public highway after he has driven past the historic landmark. In this regard the determination of the wisdom or necessity and the location of such a sign as delegated by the proposed act to the commissioner of public works and highways appears proper and, except for the provision which I have suggested similar to section 35 of part 12 of chapter 80, Revised Laws, as inserted by chapter 188 of the Laws of 1945, and the prohibition in s. 1.18 (b) of the regulations governing the Federal Road Aid Act, which applies only to certain New Hampshire highways, the bill appears to be within the scope of permissible legislation under our Constitution.

Very truly yours,

George F. Tolson
Assistant Attorney General

GFH:L